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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,783	09/15/2003	Thomas E. Yingst	DKE 9734	9519

321 7590 04/07/2006

SENNIGER POWERS
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER

SHAPIRO, JEFFERY A

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/662,783	Applicant(s) YINGST, THOMAS E.	
	Examiner Jeffrey A. Shapiro	Art Unit 3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/10/03, 10/8/04</u> . | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet.</u> |

Continuation of Attachment(s) 6). Other: also considered IDS dated 1/3/06.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 17-39 are rejected under 35 U.S.C. 102(a) as being anticipated by Topper et al (US 6,547,346 B2).

As described in **Claims 17, 23-25, 31 and 32**, Topper discloses a product server (10), a refrigerated cabinet (20), a front customer side, rear employee side, and a service door that acts as a breath guard (40, 42) with transparent section. See further figure 8 and abstract. Note that door (42) may be moved pivotally into a lowered position covering the products or raised into a position which allows access to the products while acting as a breath guard. A first power assist device (64) is connected to the product server and the door/cover (42) that applies an upward force on the cover so as to assist pivotal movement of the cover to its raised position. A second power assist device (62) is connected to said product server and said cover so as to resist movement of the cover from its raised position to its lowered position. See figures 1-3 noting that during either lowering or raising the cover (42), one of the power assist devices (62 or 64) acts as a damper to help the operator lower or raise the door in a controlled manner, as described in **Claims 25 and 27**.

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As described in **Claims 18, 22 and 26**, note that the power assist devices are gas springs. See col. 5, lines 14-19.

As described in **Claims 19 and 28**, the gas springs assist the manual operation of the door (42). See col. 6, lines 3-6.

Regarding **Claim 20**, note that it can be construed that the cover (40) is pivotally attached near the customer side. See figure 1, for example, noting the relative proximity of the gas springs (62 and 64 and hinge (65) to transparent customer side (30).

As described in **Claim 29**, the door (40) is transparent. See again, abstract, for example.

As described in **Claim 30**, note that the door (40) seals against the mating surface on the product server. See col. 5, lines 14-19.

As further described in **Claims 21, 33 and 34**, note that the cover (40) can be pivoted through anywhere from zero to 90 degrees as is apparent from figures 2 and 3.

As described in **Claims 35, 37 and 39**, note that support frames (36) are mounted on the product server and at least one of the power assist devices (62) are attached to said support frame. See figure 8 and element (36)

Regarding **Claims 36, 38 and 39**, note that the second power assist device (64) is connected to both the support frame (36) and said cover (40). See figure 8, noting gas springs (62 and 64).


Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Walker '294 and Wallace '335 are cited as further examples of product servers with breath guards.

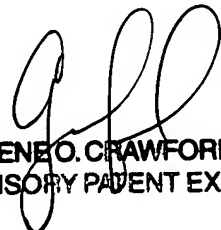
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (571)272-6943. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571)272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeffrey A. Shapiro
Examiner
Art Unit 3653

March 20, 2006


GENE O. CRAWFORD
SUPERVISORY PATENT EXAMINER